

Senate File 2353 - Enrolled

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SENATE FILE 2353

AN ACT

RELATING TO DEBT MANAGEMENT, MORTGAGE BANKERS AND BROKERS,
DELAYED DEPOSIT SERVICES, REGULATED LOANS, AND INDUSTRIAL
LOANS, AND PROVIDING FOR FEES AND PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I DEBT MANAGEMENT

Section 1. Section 533A.1, Code 2005, is amended to read
as follows:

533A.1 DEFINITIONS.

As used in this chapter:

1. "Allowable cost" means an actual, identifiable third-
party expense incurred by the licensee on behalf of a specific
debtor, such as postage and long distance telephone charges,
that may be itemized and charged against the debtor for
payment.

2. "Creditor" means a person for whose benefit moneys are
being collected and distributed by licensees.

~~2. 3. "Debt management" means the planning and management~~
~~of the financial affairs of a debtor and the receiving~~
~~therefrom of money or evidences thereof for the purpose of~~
~~distributing the same to the debtor's creditors in payment or~~
~~partial payment of the debtor's obligations for a fee.~~

~~3. 4. "Debtor" means any natural person.~~

5. "Donation" means money given by the debtor to a
licensee as a gift for debt management and outside of the debt
management contract.

6. "Fee" means the moneys paid by the debtor to the
licensee as payment for debt management and shall not include
money paid to the licensee or held by the licensee for
distribution to a creditor, allowable costs, a distribution to
the debtor as a refund, or a donation.

7. "Gratuitous debt-management service" means debt
management without charging a fee.

~~4. 8. "Licensee" means any individual, partnership,~~
~~unincorporated association, agency or corporation person~~
~~licensed under this chapter.~~

9. "Natural person" means an individual who is not an
association, joint venture, or joint stock company,
partnership, limited partnership, business corporation,
nonprofit corporation, other business entity, or any group of
individuals or business entities, however organized.

~~5. 10. "Office" means each location by street number,~~
~~building number, city, and state where any person engages in~~
~~debt management.~~

11. "Person" means an individual, an association, joint
venture or joint stock company, partnership, limited
partnership, business corporation, nonprofit corporation, or
any other group of individuals however organized.

~~6. 12. "Superintendent" means the superintendent of~~
~~banking.~~

Sec. 2. Section 533A.2, Code 2005, is amended to read as
follows:

533A.2 LICENSES REQUIRED == EXCEPTIONS.

~~1. No individual, partnership, unincorporated association,~~
~~agency or corporation A person shall not engage in the~~
~~business of debt management in this state without a license~~
~~therefor as provided for in this chapter, except that the~~
~~unless exempt under subsection 2. A person engages in the~~
~~business of debt management in this state if the person~~
~~solicits to provide, or enters into a contract with one or~~
~~more debtors to provide debt management to a debtor who~~
~~resides in this state.~~

2. The following persons, including employees of such
persons, shall not be required to be licensed when engaged in
the regular course of their respective businesses and
professions:

a. Attorneys at law.

b. Banks, savings and loan associations, credit unions,

3 4 mortgage bankers and mortgage brokers licensed or registered
3 5 under chapter 535B, insurance companies and similar
3 6 fiduciaries, regulated loan companies licensed under chapter
3 7 536, and industrial loan companies licensed under chapter
3 8 536A, authorized and admitted to transact business in this
3 9 state and performing credit and financial adjusting in the
3 10 regular course of their principal business, or while
3 11 performing an escrow function.
3 12 c. Abstract companies, while performing an escrow
3 13 function.
3 14 d. Employees of licensees under this chapter.
3 15 e. Judicial officers or others acting under court orders.
3 16 f. Nonprofit religious, fraternal or ~~co-operative~~
3 17 cooperative organizations, including credit unions, offering
3 18 to debtors gratuitous debt-management service.
3 19 g. Those persons, associations, or corporations whose
3 20 principal business is the origination of first mortgage loans
3 21 on real estate for their own portfolios or for sale to
3 22 institutional investors.
3 23 ~~2-~~ 3. The application for such a license shall be in
3 24 writing, under oath, and in the form prescribed by the
3 25 superintendent. The application shall contain all of the
3 26 following:
3 27 a. The name of the applicant, date of incorporation, if
3 28 incorporated, and the
3 29 b. If the applicant is not a natural person, the type of
3 30 business entity of the applicant and the date the entity was
3 31 organized.
3 32 c. The address where the business is to be conducted, and
3 33 similar, including information as to any branch office of the
3 34 applicant, the
3 35 d. The name and resident address of the applicant's owner
4 1 or partners, or, if a corporation, association, or agency, of
4 2 the members, shareholders, directors, trustees, principal
4 3 officers, managers, and agents, and such other pertinent
4 4 information as the superintendent may require. If the
4 5 applicant is a partnership, a copy of the certificate of
4 6 assumed name or articles of partnership shall be filed with
4 7 the application. If the applicant is not a corporation
4 8 natural person, a copy of the articles of incorporation legal
4 9 documents creating the applicant shall be filed with the
4 10 application.
4 11 e. Other pertinent information as the superintendent may
4 12 require, including a credit report.
4 13 ~~3-~~ 4. Each application shall be accompanied by a bond to
4 14 be approved by the superintendent to in favor of the people of
4 15 the state of Iowa in the penal sum of ten twenty-five thousand
4 16 dollars for each office, providing, however, the
4 17 superintendent may require such bond to be raised to a maximum
4 18 sum of twenty-five thousand dollars, and conditioned that the
4 19 obligor will not violate any law pertaining to such business
4 20 and upon the faithful accounting of all moneys collected upon
4 21 accounts entrusted to such person engaged in debt management,
4 22 and their employees and agents for the purpose of indemnifying
4 23 debtors for loss resulting from conduct prohibited by this
4 24 chapter. The aggregate liability of the surety to all debtors
4 25 doing business with the office for which the bond is filed
4 26 shall, in no event, exceed the penal sum of such bond. The
4 27 surety on the bond shall have the right to cancel such bond
4 28 upon giving thirty days' notice to the superintendent and
4 29 thereafter shall be relieved of liability for any breach of
4 30 condition occurring after the effective date of said the
4 31 cancellation. No individual, partnership, unincorporated
4 32 association, agency or corporation A person shall not engage
4 33 in the business of debt management until a good and sufficient
4 34 bond is filed in accordance with the provisions of this
4 35 chapter.
5 1 ~~4-~~ 5. Each applicant shall furnish with the application a
5 2 copy of the contract the applicant proposes to use between the
5 3 applicant and the debtor, which shall contain a schedule of
5 4 fees to be charged the debtor for the applicant's services.
5 5 ~~5-~~ 6. At the time of making such the application the
5 6 applicant shall pay to the superintendent the sum of two
5 7 hundred fifty dollars as a license fee for each of the
5 8 applicant's offices and an investigation fee in the sum of one
5 9 hundred dollars. A separate application shall be made for
5 10 each office maintained by the applicant.
5 11 Sec. 3. Section 533A.3, Code 2005, is amended to read as
5 12 follows:
5 13 533A.3 INVESTIGATION == HEARING.
5 14 1. Upon the filing of each application and the payment of

5 15 ~~such the~~ fees, the superintendent shall ~~fix a date and a time~~
5 16 ~~for a hearing upon such application, and shall make conduct an~~
5 17 investigation of the facts concerning the application and the
5 18 requirements provided ~~for~~ in subsection 3 ~~of this section.~~

5 19 2. The superintendent shall grant or deny each application
5 20 for a license within sixty days from the ~~filing thereof with~~
5 21 ~~date that the application and the required fee are filed and~~
5 22 ~~paid~~, unless the period is extended by written agreement
5 23 between the applicant and the superintendent.

5 24 3. ~~a. If the The~~ superintendent shall ~~find the enter an~~
5 25 ~~order granting the application, and issue and deliver a~~
5 26 ~~license to the applicant if the superintendent finds that both~~
5 27 ~~of the following are satisfied:~~

5 28 ~~a. The~~ experience, financial responsibility, character,
5 29 and general fitness of the applicant is ~~such sufficient~~ as to
5 30 command the confidence of the public and to warrant belief
5 31 that the business will be operated lawfully, honestly, fairly,
5 32 and efficiently within the purposes of this chapter, ~~and that~~
5 33 ~~the.~~

5 34 ~~b. The~~ applicant, ~~or if the applicant is an unincorporated~~
5 35 ~~association, agency or partnership, then the individuals~~
6 1 ~~involved, or if the applicant is a corporation then the~~
6 2 ~~officers and directors thereof, have has not been convicted of~~
6 3 ~~or pled guilty to a felony or a an indictable misdemeanor~~
6 4 ~~involving moral turpitude for financial gain, or have has not~~
6 5 ~~had a record of having defaulted in payment of money collected~~
6 6 ~~for others, including the discharge of such debts through~~
6 7 ~~bankruptcy proceedings, the superintendent shall thereupon~~
6 8 ~~enter an order granting such application and forthwith issue~~
6 9 ~~and deliver a license to the applicant. The superintendent~~
6 10 ~~may require as part of the application a credit report and~~
6 11 ~~other information.~~

6 12 ~~If the applicant is not a natural person, this subsection~~
6 13 ~~shall apply to the owners, partners, members, shareholders,~~
6 14 ~~officers, directors, and managers of the applicant.~~

6 15 ~~b. 4.~~ If the applicant has, at the time of the
6 16 application, a license for an office located within ten
6 17 ~~statute~~ miles of the location of the office named in the
6 18 application, ~~no a~~ license shall ~~not~~ be issued unless the
6 19 superintendent finds that public convenience will be served by
6 20 the issuance of ~~such the~~ license.

6 21 ~~c. 5. No A~~ license shall ~~not~~ be transferable or
6 22 assignable.

6 23 ~~4. 6.~~ If the superintendent finds the applicant not
6 24 qualified ~~by under~~ subsection 3 ~~of this section~~, the
6 25 superintendent shall enter an order denying ~~such the~~
6 26 application and ~~forthwith~~ notify the applicant of the denial,
6 27 returning the license fee. Within fifteen days after the
6 28 entry of such order, the superintendent shall prepare written
6 29 findings and shall ~~forthwith~~ deliver a copy ~~thereof~~ to the
6 30 applicant.

6 31 Sec. 4. Section 533A.5, Code 2005, is amended to read as
6 32 follows:

6 33 533A.5 RENEWAL.

6 34 1. ~~Each To~~ continue in the business of debt management,
6 35 ~~each~~ licensee shall apply on or before ~~July June~~ 1 ~~may make~~
7 1 ~~application~~ to the superintendent for renewal of its license.
7 2 ~~The superintendent may assess a late fee of ten dollars per~~
7 3 ~~day for applications submitted and accepted for processing~~
7 4 ~~after June 1.~~

7 5 2. The ~~renewal~~ application shall be on the form prescribed
7 6 by the superintendent and shall be accompanied by a fee of ~~one~~
7 7 ~~two~~ hundred ~~fifty~~ dollars, ~~together with a bond as in the case~~
7 8 ~~of an original application.~~ A separate renewal application
7 9 shall be made for each office maintained by the applicant.

7 10 Sec. 5. ~~NEW SECTION.~~ 533A.5A CHANGE IN CONTROL == NAME
7 11 OR ADDRESS.

7 12 1. The prior written approval of the superintendent is
7 13 required whenever a change in the control of a licensee is
7 14 proposed. For purposes of this section, "control" in the case
7 15 of a corporation means direct or indirect ownership, or the
7 16 right to control, ten percent or more of the voting shares of
7 17 the corporation, or the ability of a person to elect a
7 18 majority of the directors or otherwise effect a change in
7 19 policy. "Control" in the case of any other entity means the
7 20 principals of the organization whether active or passive. The
7 21 superintendent may require information deemed necessary to
7 22 determine whether a new application is required. When
7 23 requesting approval, the person shall submit a fee of one
7 24 hundred dollars to the superintendent.

7 25 2. A licensee shall notify the superintendent and submit a

7 26 fee of twenty-five dollars per license to the superintendent
7 27 thirty days in advance of the effective date of any of the
7 28 following:

- 7 29 a. A change in the name of the licensee.
- 7 30 b. A change in the address where the business is
7 31 conducted.

7 32 Sec. 6. Section 533A.7, subsection 1, paragraph a, Code
7 33 2005, is amended to read as follows:

- 7 34 a. Conviction of a felony or of ~~a~~ an indictable
7 35 misdemeanor ~~involving moral turpitude~~ for financial gain.

8 1 Sec. 7. Section 533A.9, Code 2005, is amended to read as
8 2 follows:

8 3 533A.9 FEE AGREED IN ADVANCE.

8 4 The fee of the licensee charged to the debtor shall be
8 5 agreed upon in advance and stated in the contract and
8 6 provision for settlement in case of cancellation or prepayment
8 7 shall also be clearly stated herein in the contract. The fee
8 8 of the licensee charged to the debtor shall not exceed fifteen
8 9 percent of any payment made by the debtor and distributed to
8 10 the creditors pursuant to the contract. In case of total
8 11 payment of the contract before the contract period has
8 12 expired, the licensee shall be entitled only to a fee of no
8 13 more than three percent of ~~such the~~ final payment.

8 14 Sec. 8. NEW SECTION. 533A.9A DONATIONS.

8 15 A donation shall not be charged to a debtor or creditor,
8 16 deducted from a payment to a creditor, deducted from the
8 17 debtor's account, or from payments made to the licensee
8 18 pursuant to the debt management contract. If a licensee
8 19 requests a donation from a debtor, the licensee must clearly
8 20 indicate that any donation is voluntary and not a condition or
8 21 requirement for providing debt management.

8 22 Sec. 9. Section 533A.10, Code 2005, is amended to read as
8 23 follows:

8 24 533A.10 EXAMINATION OF LICENSEE.

8 25 1. The superintendent may examine the condition and
8 26 affairs of ~~said~~ a licensee. In connection with any
8 27 examination, the superintendent may examine on oath any
8 28 licensee, and any director, officer, employee, customer,
8 29 creditor, or stockholder of a licensee concerning the affairs
8 30 and business of the licensee. The superintendent shall
8 31 ascertain whether the licensee transacts its business in the
8 32 manner prescribed by the law and the applicable rules and
~~8 33 regulations issued thereunder~~. The licensee shall pay the
8 34 cost of the examination as determined by the superintendent,
~~8 35 which fee shall not exceed the sum of one hundred dollars per~~
~~9 1 day of examination based on the actual cost of the operation~~
~~9 2 of the finance bureau of the banking division of the~~
~~9 3 department of commerce, including the proportionate share of~~
~~9 4 the administrative expenses in the operation of the banking~~
~~9 5 division attributable to the finance bureau, as determined by~~
~~9 6 the superintendent, incurred in the discharge of duties~~
~~9 7 imposed upon the superintendent by this chapter~~. Failure to
9 8 pay the examination fee within thirty days of receipt of
9 9 demand from the superintendent shall ~~automatically suspend the~~
~~9 10 license until the fee is paid~~ subject the licensee to a late
9 11 fee of up to five percent per day of the amount of the
9 12 examination fee for each day the payment is delinquent.

9 13 2. In the investigation of alleged violations of this
9 14 chapter, the superintendent may compel the attendance of any
9 15 person or the production of any books, accounts, records and
9 16 files ~~used therein~~, and may examine under oath all persons in
9 17 attendance ~~pursuant thereto~~.

~~9 18 The superintendent is authorized to make and promulgate as~~
~~9 19 prescribed by law regulations necessary to carry out the~~
~~9 20 purposes of this chapter~~.

9 21 Sec. 10. NEW SECTION. 533A.12 RULES.

9 22 The superintendent may adopt administrative rules pursuant
9 23 to chapter 17A to administer and enforce the provisions of
9 24 this chapter.

9 25 Sec. 11. Section 533A.13, Code 2005, is amended to read as
9 26 follows:

9 27 533A.13 LICENSE MANDATORY TO BUSINESS.

9 28 It shall be unlawful for ~~an individual, partnership,~~
~~9 29 unincorporated association, agency or corporation~~ a person to
9 30 engage in the business of debt management without first
9 31 obtaining a license as required by this chapter. Any
9 32 ~~individual, partnership, unincorporated association, agency,~~
~~9 33 corporation or any other group of individuals, however~~
~~9 34 organized,~~ person or any owner, partner, member, officer,
9 35 director, employee, agent, or representative thereof who shall
10 1 willfully or knowingly engage in the business of debt

10 2 management without the license required by this chapter, shall
10 3 be guilty of a serious misdemeanor.

10 4 DIVISION II

10 5 MORTGAGE BANKERS AND BROKERS

10 6 Sec. 12. Section 535B.1, subsection 2, Code Supplement
10 7 2005, is amended to read as follows:

10 8 ~~2. 5A. "First mortgage "Mortgage~~ loan" means a loan of
10 9 money secured by a ~~first~~ lien on residential real property and
10 10 includes a refinancing of a contract of sale, an assumption of
10 11 a prior mortgage loan, and a refinancing of a prior mortgage
10 12 loan.

10 13 Sec. 13. Section 535B.1, subsection 4, Code 2005, as
10 14 amended by 2005 Iowa Acts, chapter 83, section 2, is amended
10 15 to read as follows:

10 16 4. "Mortgage banker" means a person who does one or more
10 17 of the following:

10 18 a. Makes at least four ~~first~~ mortgage loans on residential
10 19 real property located in this state in a calendar year.

10 20 b. Originates at least four ~~first~~ mortgage loans on
10 21 residential real property located in this state in a calendar
10 22 year and sells four or more such loans in the secondary
10 23 market.

10 24 c. Services at least four ~~first~~ mortgage loans on
10 25 residential real property located in this state. However, a
10 26 natural person, who services less than fifteen ~~first~~ mortgage
10 27 loans on residential real estate within the state and who does
10 28 not sell or transfer ~~first~~ mortgage loans, is exempt from this
10 29 paragraph if that person is otherwise exempt from the
10 30 provisions of this chapter.

10 31 "Mortgage banker" does not include a person whose job
10 32 responsibilities on behalf of a licensee or individual
10 33 registrant are to process mortgage loans, are solely clerical
10 34 in nature, or otherwise do not involve direct contact with
10 35 loan applicants.

11 1 Sec. 14. Section 535B.1, subsection 5, Code 2005, as
11 2 amended by 2005 Iowa Acts, chapter 83, section 3, is amended
11 3 to read as follows:

11 4 5. "Mortgage broker" means a person who arranges or
11 5 negotiates, or attempts to arrange or negotiate, at least four
11 6 ~~first~~ mortgage loans or commitments for four or more such
11 7 loans on residential real property located in this state in a
11 8 calendar year. "Mortgage broker" does not include a person
11 9 whose job responsibilities on behalf of a licensee or
11 10 individual registrant are to process mortgage loans, are
11 11 solely clerical in nature, or otherwise do not involve direct
11 12 contact with loan applicants.

11 13 Sec. 15. Section 535B.4, subsection 7, Code 2005, is
11 14 amended to read as follows:

11 15 7. Applications for renewals of licenses and individual
11 16 registrations under this chapter must be filed with the
11 17 administrator before June 1 of the year of expiration and on
11 18 forms prescribed by the administrator. A renewal application
11 19 must be accompanied by a fee of two hundred dollars for a
11 20 license to transact business solely as a mortgage broker, and
11 21 four hundred dollars for a license to transact business as a
11 22 mortgage banker. The fee to renew an individual registration
11 23 shall be the fee determined pursuant to 2005 Iowa Acts,
11 24 chapter 83, section 6. The administrator may assess a late
11 25 fee of ten dollars per day for applications or registrations
11 26 accepted for processing after June 1.

11 27 Sec. 16. Section 535B.4, Code 2005, is amended by adding
11 28 the following new subsection:

11 29 NEW SUBSECTION. 8. A licensee shall not conduct business
11 30 under any other name than that given in the license. A
11 31 fictitious name may be used, but a licensee shall conduct
11 32 business only under one name at a time. However, the
11 33 administrator may issue more than one license to the same
11 34 person to conduct business under different names at the same
11 35 time upon compliance for each such additional license with all
12 1 of the provisions of this chapter governing an original
12 2 issuance of a license.

12 3 Sec. 17. Section 535B.4A, subsection 2, as enacted by 2005
12 4 Iowa Acts, chapter 83, section 6, is amended to read as
12 5 follows:

12 6 2. An individual registrant who registers pursuant to this
12 7 section for the first time shall submit to a national criminal
12 8 background history check through the federal bureau of
12 9 investigation prior to being registered. The administrator
12 10 may submit the registrant's fingerprints to the federal bureau
12 11 of investigation by the department of public safety through
12 12 the state criminal history repository for the purpose of a

~~12 13 national criminal history check. The results of a criminal~~
~~12 14 history check conducted pursuant to this subsection shall not~~
~~12 15 be considered a public record under chapter 22. The~~
12 16 administrator shall collect fees necessary to cover the costs
12 17 associated with criminal ~~background~~ history checks conducted
12 18 pursuant to this section.

12 19 Sec. 18. NEW SECTION. 535B.6A NOTICE AND APPROVAL
12 20 REQUIRED.

12 21 1. A licensee shall submit a notice of name change and a
12 22 twenty-five dollar fee for each license to the administrator
12 23 thirty days prior to changing the name of the licensee.

12 24 2. The prior written approval is required whenever a
12 25 change in control of a licensee or registrant is proposed.
12 26 For purposes of this section, "control" means as defined in
12 27 section 524.103. The administrator may require the licensee
12 28 to provide any information deemed necessary by the
12 29 administrator to determine whether a new application is
12 30 required. At the time of requesting the approval, the
12 31 licensee or registrant requesting the change of control shall
12 32 pay to the administrator a fee of one hundred dollars.

12 33 Sec. 19. Section 535B.7, Code 2005, is amended to read as
12 34 follows:

12 35 535B.7 ~~SUSPENSION OR REVOCATION OF LICENSE DISCIPLINARY~~
13 1 ~~ACTION.~~

13 2 1. The administrator may, pursuant to chapter 17A, ~~suspend~~
~~13 3 or revoke any license issued pursuant to this chapter take~~
~~13 4 disciplinary action against a licensee or individual~~

~~13 5 registrant~~ if the administrator finds any of the following:

13 6 a. The licensee ~~or individual registrant~~ has violated a
13 7 provision of this chapter or a rule adopted under this chapter
13 8 or any other state or federal law applicable to the conduct of
13 9 its business including but not limited to chapters 535 and
13 10 535A.

13 11 b. A fact or condition exists which, if it had existed at
13 12 the time of the original application for the license ~~or~~
~~13 13 individual registration~~, would have warranted the
13 14 administrator to refuse originally to issue the license ~~or~~
~~13 15 individual registration.~~

13 16 c. The licensee is found upon investigation to be
13 17 insolvent, in which case the license shall be revoked
13 18 immediately.

13 19 ~~d. The licensee or individual registrant has violated an~~
~~13 20 order of the administrator.~~

13 21 2. The administrator may impose one or more of the
13 22 following disciplinary actions against a licensee or
13 23 individual registrant:

13 24 a. ~~Revoke a license or individual registration.~~

13 25 b. ~~Suspend a license or individual registration until~~
~~13 26 further order of the administrator or for a specified period~~
~~13 27 of time.~~

13 28 c. ~~Impose a period of probation under specified~~
~~13 29 conditions.~~

13 30 d. ~~Impose civil penalties in an amount not to exceed five~~
~~13 31 thousand dollars for each violation.~~

13 32 e. ~~Issue a citation and warning respecting licensee or~~
~~13 33 individual registrant behavior.~~

13 34 ~~2-~~ 3. The administrator may order an emergency suspension
13 35 of a licensee's license ~~or an individual's registration~~
14 1 pursuant to section 17A.18A. A written order containing the
14 2 facts or conduct which warrants the emergency action shall be
14 3 timely sent to the licensee ~~or individual registrant~~ by
14 4 restricted certified mail. Upon issuance of the suspension
14 5 order, the licensee ~~or individual registrant~~ must also be
14 6 notified of the right to an evidentiary hearing. A suspension
14 7 proceeding shall be promptly instituted and determined.

14 8 Except as provided in this section, a license ~~or individual~~
~~14 9 registration~~ shall not be revoked or suspended except after
14 10 notice and a hearing thereon in accordance with chapter 17A.

14 11 ~~3-~~ 4. A licensee may surrender a license ~~and an~~
~~14 12 individual registrant may surrender an individual registration~~
14 13 by delivering to the administrator written notice of
14 14 surrender, but a surrender does not affect the licensee's ~~or~~
~~14 15 individual registrant's~~ civil or criminal liability for acts
14 16 committed before the surrender.

14 17 ~~4-~~ 5. A revocation, suspension, or surrender of a license
14 18 ~~or individual registration~~ does not impair or affect the
14 19 obligation of a preexisting lawful contract between the
14 20 licensee ~~or individual registrant~~ and any person, including a
14 21 mortgagor.

14 22 Sec. 20. Section 535B.9, subsection 1, Code 2005, as
14 23 amended by 2005 Iowa Acts, chapter 83, section 7, is amended

14 24 to read as follows:

14 25 1. An applicant for a license shall file with the
14 26 administrator a bond furnished by a surety company authorized
14 27 to do business in this state, together with evidence of
14 28 whether the applicant is seeking to transact business as a
14 29 mortgage broker or as a mortgage banker. The bond shall be in
14 30 the amount of ~~twenty-five~~ fifty thousand dollars for an
14 31 ~~applicant seeking to transact business solely as a mortgage~~
14 32 ~~broker, or fifty thousand dollars for an applicant seeking to~~
14 33 ~~transact business as a mortgage banker~~. The bond shall be
14 34 continuous in nature until canceled by the surety with not
14 35 less than thirty days' notice in writing to the mortgage
15 1 broker or mortgage banker and to the administrator indicating
15 2 the surety's intention to cancel the bond on a specific date.
15 3 The bond shall be for the use of the state and any persons who
15 4 may have causes of action against the applicant. The bond
15 5 shall be conditioned upon the applicant's faithfully
15 6 conforming to and abiding by this chapter and any rules
15 7 adopted under this chapter and shall require that the surety
15 8 pay to the state and to any persons all moneys that become due
15 9 or owing to the state and to the persons from the applicant by
15 10 virtue of this chapter.

15 11 Sec. 21. Section 535B.10, Code Supplement 2005, is amended
15 12 to read as follows:

15 13 535B.10 INVESTIGATIONS AND EXAMINATIONS.

15 14 1. Within one hundred twenty days after the end of a
15 15 mortgage banker licensee's fiscal year, the mortgage banker
15 16 licensee shall file financial statements which are certified
15 17 audited by an independent certified public accounting firm.
15 18 2. For the purposes of discovering violations of this
15 19 chapter or any related rules ~~adopted under this chapter~~ or for
15 20 securing information lawfully required under this chapter, the
15 21 administrator may at any time and as often as the
15 22 administrator deems necessary, investigate the business and
15 23 examine the books, accounts, records, and files used by a
15 24 licensee or individual registrant. ~~However, if the financial~~
15 25 ~~statement required by subsection 1 shows that the licensee~~
15 26 ~~satisfies the minimum net worth requirement necessary to be an~~
15 27 ~~approved mortgagee by the United States department of housing~~
15 28 ~~and urban development pursuant to its guidelines, as amended,~~
15 29 ~~the licensee is not subject to an investigation or examination~~
15 30 ~~as described in this subsection.~~

15 31 3. ~~Notwithstanding subsection 2, all licensees are subject~~
15 32 ~~to limited examination by the administrator to investigate~~
15 33 ~~complaints or alleged violations about the licensee made to~~
15 34 ~~the administrator. Such investigation or examination by the~~
15 35 ~~administrator shall be restricted to acquiring information~~
16 1 ~~from the licensee relevant to the alleged violations.~~

16 2 4. 3. In conducting any examination under this section,
16 3 the administrator may rely on current reports made by the
16 4 licensee which have been prepared for the following federal
16 5 agencies or federally related entities:

- 16 6 a. United States department of housing and urban
- 16 7 development.
- 16 8 b. Federal housing administration.
- 16 9 c. Federal national mortgage association.
- 16 10 d. Government national mortgage association.
- 16 11 e. Federal home loan mortgage corporation.
- 16 12 f. Veterans administration.

16 13 5. 4. With respect to mortgage lenders or mortgage
16 14 bankers who are specifically exempted from this chapter but
16 15 are subject to sections 535B.11, 535B.12, and 535B.13, the
16 16 powers of examination and investigation concerning compliance
16 17 with sections 535B.11, 535B.12, and 535B.13 shall be exercised
16 18 by the official or agency to whose supervision the exempted
16 19 person is subject. If the administrator receives a complaint
16 20 or other information concerning noncompliance with this
16 21 chapter by an exempted person, the administrator shall inform
16 22 the official or agency having supervisory authority over that
16 23 person.

16 24 6. 5. a. The licensee shall pay the cost of the
16 25 examination or investigation as determined by the
16 26 administrator based on the actual cost of the operation of the
16 27 finance bureau of the banking division of the department of
16 28 commerce, including the proportionate share of administrative
16 29 expenses in the operation of the banking division attributable
16 30 to the finance bureau as determined by the administrator,
16 31 incurred in the discharge of duties imposed upon the
16 32 administrator by this chapter.

16 33 b. The total charge for an examination or investigation
16 34 shall be paid by the licensee to the administrator within

16 35 thirty days after the administrator has requested payment.
17 1 ~~The administrator may by rule provide for a charge for late~~
17 2 ~~payment of the fee. The amount of the fee shall be based on~~
17 3 ~~the actual costs of the examination as determined by the~~
17 4 ~~administrator. Examination reports and correspondence~~
17 5 ~~regarding these reports Failure to pay the charge within~~
17 6 ~~thirty days shall subject the licensee to a late fee of up to~~
17 7 ~~five percent of the amount of the examination or investigation~~
17 8 ~~charge for each day the payment is delinquent.~~

17 9 6. a. All papers, documents, examination reports, and
17 10 other writings relating to the supervision of licensees and
17 11 registrants shall be kept confidential except as provided in
17 12 this subsection, notwithstanding chapter 22.

17 13 b. The administrator may furnish information relating to
17 14 the supervision of licensees and registrants to the federal
17 15 agencies or federally related entities listed in subsection 3,
17 16 the federal deposit insurance corporation, the federal reserve
17 17 system, the office of the comptroller of the currency, the
17 18 office of thrift supervision, the national credit union
17 19 administration, the federal home loan bank, and financial
17 20 institution regulatory authorities of other states, or to any
17 21 official or supervising examiner of such regulatory
17 22 authorities.

17 23 c. The administrator may release summary complaint
17 24 information regarding a particular licensee so long as the
17 25 information does not specifically identify the complainant.

17 26 d. The administrator may prepare and circulate reports
17 27 reflecting financial information and examination results for
17 28 all licensees on an aggregate basis, including other
17 29 information considered pertinent to the purpose of each report
17 30 for general statistical information.

17 31 e. The administrator may prepare and circulate reports
17 32 provided by law.

17 33 f. The administrator may release the reports and
17 34 correspondence in the course of an enforcement proceeding or a
17 35 hearing held by the administrator.

18 1 g. The administrator may also provide this information to
18 2 the attorney general for purposes of enforcing this chapter or
18 3 the consumer fraud Act, section 714.16.

18 4 Sec. 22. Section 535B.11, subsection 6, Code 2005, is
18 5 amended to read as follows:

18 6 6. If a person in connection with a ~~first~~ mortgage loan
18 7 has possession of an abstract of title and fails to deliver
18 8 the abstract to the borrower within twenty calendar days of
18 9 the borrower's request made by certified mail return receipt
18 10 requested in connection with a proposed sale of the property,
18 11 then the borrower may authorize the preparation of a new
18 12 abstract of title to the property and the person failing to
18 13 deliver the original abstract shall pay to the borrower the
18 14 reasonable costs of preparation. If the borrower brings an
18 15 action against the person failing to deliver to recover ~~such~~
18 16 ~~the~~ payment and in the action recovers the payment, then the
18 17 borrower shall also be entitled to recover attorney fees and
18 18 court costs incurred in the action.

18 19 Sec. 23. Section 535B.11, subsection 7, unnumbered
18 20 paragraph 1, Code 2005, is amended to read as follows:

18 21 When the servicing of a ~~first~~ mortgage loan is transferred,
18 22 sold, purchased, or accepted by a licensee or registrant, the
18 23 licensee or registrant who is transferring or selling the
18 24 servicing shall issue to the mortgagor, within ~~five business~~
18 25 ~~fifteen calendar~~ days ~~prior to the effective date~~ of the
18 26 transfer, a notice which shall include at a minimum:

18 27 Sec. 24. NEW SECTION. 535B.17 POWERS AND DUTIES OF THE
18 28 ADMINISTRATOR == WAIVER AUTHORITY.

18 29 In addition to any other duties imposed upon the
18 30 administrator by law, the administrator may participate in a
18 31 multistate automated licensing system for mortgage bankers,
18 32 mortgage brokers, and individual registrants. For this
18 33 purpose, the administrator may establish by rule or order new
18 34 requirements as necessary, including but not limited to
18 35 requirements that license applicants and individual
19 1 registrants submit to fingerprinting, criminal history checks,
19 2 and pay fees therefor.

19 3 DIVISION III
19 4 DELAYED DEPOSIT SERVICES

19 5 Sec. 25. Section 533D.3, subsection 2, Code 2005, is
19 6 amended to read as follows:

19 7 2. An applicant for a license shall submit an application,
19 8 ~~under oath,~~ to the superintendent on forms prescribed by the
19 9 superintendent. The forms shall contain such information as
19 10 the superintendent may prescribe.

19 11 Sec. 26. Section 533D.3, subsection 3, paragraph a, Code
19 12 2005, is amended to read as follows:

~~19 13 a. An application fee in an amount prescribed by rule
19 14 adopted by the superintendent of one hundred dollars.~~

19 15 Sec. 27. Section 533D.3, subsection 6, Code 2005, is
19 16 amended to read as follows:

19 17 6. a. A license issued pursuant to this chapter shall be
19 18 conspicuously posted at the licensee's place of business. A
19 19 license shall remain in effect until the next succeeding May
19 20 1, unless earlier suspended or revoked by the superintendent.

19 21 b. A license shall be renewed annually by filing with the
19 22 superintendent on or before April 1 an application for renewal
19 23 containing such information as the superintendent may require
19 24 to indicate any material change in the information contained
19 25 in the original application or succeeding renewal applications
19 26 and a renewal fee of one two hundred fifty dollars.

~~19 27 c. The superintendent may assess a late fee of ten dollars
19 28 per day for applications submitted and accepted for processing
19 29 after April 1.~~

19 30 Sec. 28. Section 533D.6, subsection 1, Code 2005, is
19 31 amended to read as follows:

19 32 1. The prior written approval of the superintendent is
19 33 required for the continued operation of a delayed deposit
19 34 services business whenever a change in control of a licensee
19 35 is proposed. The person requesting such approval shall pay to
20 1 the superintendent a fee of one hundred dollars. Control in
20 2 the case of a corporation means direct or indirect ownership,
20 3 or the right to control, ten percent or more of the voting
20 4 shares of the corporation, or the ability of a person to elect
20 5 a majority of the directors or otherwise effect a change in
20 6 policy. Control in the case of any other entity means any
20 7 change in the principals of the organization, whether active
20 8 or passive. The superintendent may require information deemed
20 9 necessary to determine whether a new application is required.
20 10 Costs incurred by the superintendent in investigating a change
20 11 of control request shall be paid by the person requesting such
20 12 approval.

20 13 Sec. 29. Section 533D.7, subsection 3, Code 2005, is
20 14 amended to read as follows:

~~20 15 3. A fee of one hundred fifty twenty=five dollars shall be
20 16 paid to the superintendent for each request made pursuant to
20 17 subsection 1 or 2 for a change of location. For each new
20 18 branch office established, a fee of two hundred fifty dollars
20 19 shall be paid to the superintendent.~~

20 20 Sec. 30. NEW SECTION. 533D.7A NOTICE OF NAME CHANGE.

20 21 A licensee shall notify the superintendent thirty days in
20 22 advance of the effective date of a change in the name of the
20 23 licensee. With the notice of change, the licensee shall
20 24 submit a fee of twenty=five dollars per license to the
20 25 superintendent.

20 26 Sec. 31. Section 533D.9, subsection 2, Code 2005, is
20 27 amended to read as follows:

20 28 2. A licensee shall give to the maker of the check, at the
20 29 time any delayed deposit service transaction is made, or if
20 30 there are two or more makers, to one of them, notice written
20 31 in clear, understandable language disclosing all of the
20 32 following:

20 33 a. The fee to be charged for the transaction.

~~20 34 b. The annual percentage rate on the first hundred dollars
20 35 on the face amount of the check which the fee represents, and
21 1 the annual percentage rate on subsequent one hundred dollar
21 2 increments which the fee represents, if different as computed
21 3 pursuant to the federal Truth in Lending Act.~~

21 4 c. The date on which the check will be deposited or
21 5 presented for negotiation.

21 6 d. Any penalty, not to exceed fifteen dollars, which the
21 7 licensee will charge if the check is not negotiable on the
21 8 date agreed upon. A penalty to be charged pursuant to this
21 9 section shall only be collected by the licensee once on a
21 10 check no matter how long the check remains unpaid. A penalty
21 11 to be charged pursuant to this section is a licensee's
21 12 exclusive remedy and if a licensee charges a penalty pursuant
21 13 to this section no other penalties under this chapter or any
21 14 other provision apply.

21 15 Sec. 32. Section 533D.11, Code 2005, is amended to read as
21 16 follows:

21 17 533D.11 EXAMINATION OF RECORDS BY SUPERINTENDENT.

~~21 18 1. The superintendent shall examine the books, accounts,
21 19 and records of each licensee annually. The costs of the
21 20 superintendent incurred in an examination shall be paid by the
21 21 licensee at least once a year and as needed to secure~~

21 22 information required pursuant to this chapter and to determine
21 23 whether any violations of this chapter have occurred. The
21 24 licensee shall pay the cost of the examination.
21 25 2. The superintendent may examine or investigate
21 26 complaints or reports concerning alleged violations of this
21 27 chapter or any rule adopted or order issued by the
21 28 superintendent. The superintendent may order the actual cost
21 29 of the examination or investigation to be paid by the person
21 30 who is the subject of the examination or investigation,
21 31 whether or not the alleged violator is licensed.
21 32 3. The superintendent shall determine the cost of the
21 33 examination or investigation based upon the actual cost of the
21 34 operation of the finance bureau of the banking division of the
21 35 department of commerce, including the proportionate share of
22 1 administrative expenses in the operation of the banking
22 2 division attributable to the finance bureau as determined by
22 3 the superintendent, incurred in the discharge of duties
22 4 imposed upon the superintendent by this chapter.
22 5 4. Failure to pay the examination or investigation fee
22 6 within thirty days of receipt of demand from the
22 7 superintendent shall subject the licensee to a late fee of up
22 8 to five percent of the amount of the examination or
22 9 investigation fee for each day the payment is delinquent.
22 10 5. The superintendent may disclose information to
22 11 representatives of other state or federal regulatory
22 12 authorities. The superintendent may release summary complaint
22 13 information so long as the information does not specifically
22 14 identify the complainant. The superintendent may prepare and
22 15 circulate reports reflecting financial information and
22 16 examination results for all licensees on an aggregate basis,
22 17 including other information considered pertinent to the
22 18 purpose of each report for general statistical information.
22 19 The superintendent may prepare and circulate reports provided
22 20 by law. The superintendent may release the reports and
22 21 correspondence in the course of an enforcement proceeding or a
22 22 hearing held by the superintendent. The superintendent may
22 23 also provide this information to the attorney general for
22 24 purposes of enforcing this chapter or the consumer fraud Act,
22 25 section 714.16.

22 26 DIVISION IV
22 27 REGULATED LOANS

22 28 Sec. 33. Section 536.2, Code 2005, is amended to read as
22 29 follows:

22 30 536.2 APPLICATION == FEES.

22 31 1. Application An application for such a license shall be
22 32 in writing, under oath, and in the form prescribed by the
22 33 superintendent, and shall contain the all of the following:

22 34 a. The name and the address, (both of the residence and
22 35 place of business), of the applicant, and if, If the
23 1 applicant is not a copartnership or association natural
23 2 person, the application shall include the name and address of
23 3 every member thereof, and if a corporation, of each officer
23 4 and director thereof; also the, director, officer, manager,
23 5 and trustee of the applicant.

23 6 b. The county and municipality with street and number, if
23 7 any, of the place where the business of making loans under the
23 8 provisions of this chapter is to be conducted, and such
23 9 further

23 10 c. Other relevant information as the superintendent may
23 11 require.

23 12 2. Such The applicant at the time of making such the
23 13 application shall pay to the superintendent the sum of fifty
23 14 one hundred dollars if the liquid assets of the applicant are
23 15 not in excess of twenty thousand dollars, and the sum of one
23 16 hundred dollars if the liquid assets of the applicant are in
23 17 excess of twenty thousand dollars, as a fee for investigating
23 18 the application and the additional sum of one hundred twenty=
23 19 five dollars if the liquid assets of the applicant are not in
23 20 excess of twenty thousand dollars, and two hundred fifty
23 21 dollars if the liquid assets of the applicant are in excess of
23 22 twenty thousand dollars, as an annual license fee.

23 23 3. Every applicant shall also prove, in form satisfactory
23 24 to the superintendent, that the applicant has available for
23 25 the operation of such business at the place of business
23 26 specified in the application, liquid assets of at least five
23 27 thousand dollars, or that the applicant has at least the said
23 28 amount actually in use in the conduct of such business at such
23 29 place of business.

23 30 Sec. 34. Section 536.7, Code 2005, is amended to read as
23 31 follows:

23 32 536.7 SEPARATE LICENSE == CHANGE OF NAME OR PLACE OF

23 33 BUSINESS.

23 34 1. Not more than Only one place of business where such
23 35 loans are made shall be maintained under the same a license,
24 1 but. However, the superintendent may issue more than one
24 2 license to the same licensee upon compliance, for each such
24 3 additional license, with all the provisions of this chapter
24 4 governing an original issuance of a license.

24 5 ~~Whenever a licensee shall change such place of business to~~
24 6 ~~another location the licensee shall at once give written~~
24 7 ~~notice thereof to the superintendent who shall attach to the~~
24 8 ~~license in writing the superintendent's record of the change~~
24 9 ~~and the date thereof, which shall be authority for the~~
24 10 ~~operation of such business under such license at such new~~
24 11 ~~place of business.~~

24 12 2. A licensee shall notify the superintendent and submit a
24 13 fee of twenty-five dollars per license to the superintendent
24 14 thirty days in advance of the effective date of any of the
24 15 following:

24 16 a. A change in the name of the licensee.

24 17 b. A change in the address of the location where the
24 18 business is conducted.

24 19 Sec. 35. NEW SECTION. 536.7A CHANGE IN CONTROL ==
24 20 APPROVAL.

24 21 The prior written approval of the superintendent is
24 22 required whenever a change in control of the licensee is
24 23 proposed. For purposes of this section, "control" means
24 24 control as defined in section 524.103. The superintendent may
24 25 require information deemed necessary to determine whether a
24 26 new application is required. When requesting approval, the
24 27 person shall submit a fee of one hundred dollars to the
24 28 superintendent.

24 29 Sec. 36. Section 536.8, Code 2005, is amended to read as
24 30 follows:

24 31 536.8 ANNUAL FEE == PAYMENT == ~~NEW BOND.~~

24 32 ~~Every licensee shall annually, on or before the fifteenth~~
24 33 ~~day of each December 1, submit a renewal application on forms~~
24 34 ~~prescribed by the superintendent and pay to the superintendent~~
24 35 ~~the sum as provided in section 536.2 as an annual license fee~~
25 1 ~~for the next succeeding calendar year and shall at the same~~
25 2 ~~time file with the superintendent a new bond or renewal of the~~
25 3 ~~old bond in the same amount and of the same character as~~
25 4 ~~required by section 536.3. The superintendent may assess a~~
25 5 ~~late fee of ten dollars per day, per license for renewal~~
25 6 ~~applications received after December 1.~~

25 7 Sec. 37. Section 536.10, Code 2005, is amended to read as
25 8 follows:

25 9 536.10 EXAMINATION OF BUSINESS == FEE.

25 10 1. For the purpose of discovering violations of this
25 11 chapter or securing information lawfully required by the
25 12 superintendent ~~hereunder~~, the superintendent may at any time,
25 13 either personally or by ~~an individual or individuals duly~~
25 14 ~~designated by the superintendent designee~~, investigate the
25 15 loans and business and examine the books, accounts, records,
25 16 and files ~~used therein~~, of every licensee and of every person
25 17 engaged in the business described in section 536.1, whether
25 18 such person shall act or claim to act as principal or agent,
25 19 or under or without the authority of this chapter. ~~For that~~
25 20 ~~purpose the~~

25 21 a. The superintendent and the superintendent's ~~duly~~
25 22 ~~designated representatives designee~~ shall have and be given
25 23 free access to the place of business, books, accounts, papers,
25 24 records, files, safes, and vaults of all ~~such~~ persons
25 25 ~~examined.~~

25 26 b. The superintendent and ~~all individuals duly designated~~
25 27 ~~by the superintendent the designee~~ shall have authority to
25 28 require the attendance of and to examine under oath all
25 29 individuals ~~whomsoever~~ whose testimony the superintendent may
25 30 require relative to ~~such the~~ loans or ~~such the~~ business.

25 31 2. The superintendent shall make an examination of the
25 32 affairs, place of business, and records of each licensed place
25 33 of business at least once each year.

25 34 3. A licensee subject to examination, supervision, and
25 35 regulation by the superintendent, shall pay to the
26 1 superintendent an examination fee, based on the actual cost of
26 2 the operation of the regulated loan bureau of the banking
26 3 division of the department of commerce, and the proportionate
26 4 share of administrative expenses in the operation of the
26 5 banking division attributable to the regulated loan bureau as
26 6 determined by the superintendent ~~of banking~~. The fee shall
26 7 apply equally to all licenses and shall not be changed more
26 8 frequently than annually ~~and when changed~~. A fee change

26 9 shall be effective on January 1 of the year following the year
26 10 in which the change is approved.

26 11 4. Upon completion of each examination required or allowed
26 12 by this chapter, the examiner ~~shall render a bill for such~~
~~26 13 fee, in triplicate, and shall deliver one copy of the bill for~~
26 14 ~~the examination~~ to the licensee and two copies to the
26 15 superintendent. Failure to pay the fee to the superintendent
26 16 within ~~ten~~ thirty days after the date of the close of ~~each~~
~~26 17 such the~~ examination shall subject the licensee to an
26 18 additional fee of five percent of the amount of ~~such the~~ fee
26 19 for each day the payment is delinquent.

26 20 5. ~~Except as otherwise provided by this chapter, all~~
26 21 ~~papers, documents, examination reports, and other writing~~
26 22 ~~relating to the supervision of licensees are not public~~
26 23 ~~records and are not subject to disclosure under chapter 22.~~
26 24 ~~The superintendent may disclose information to representatives~~
26 25 ~~of other state or federal regulatory authorities. The~~
26 26 ~~superintendent may release summary complaint information so~~
26 27 ~~long as the information does not specifically identify the~~
26 28 ~~complainant. The superintendent may prepare and circulate~~
26 29 ~~reports reflecting financial information and examination~~
26 30 ~~results for all licensees on an aggregate basis, including~~
26 31 ~~other information considered pertinent to the purpose of each~~
26 32 ~~report for general statistical information. The~~
26 33 ~~superintendent may prepare and circulate reports provided by~~
26 34 ~~law. The superintendent may release the reports and~~
26 35 ~~correspondence in the course of an enforcement proceeding or a~~
27 1 ~~hearing held by the superintendent. The superintendent may~~
27 2 ~~also provide this information to the attorney general for~~
27 3 ~~purposes of enforcing this chapter or the consumer fraud Act,~~
27 4 ~~section 714.16.~~

27 5 Sec. 38. Section 536.13, Code Supplement 2005, is amended
27 6 to read as follows:

27 7 536.13 ~~BANKING COUNCIL SUPERINTENDENT~~ == REPORT ==
27 8 CLASSIFICATION == RULES == PENALTY == CONSUMER CREDIT CODE.

27 9 1. The ~~state banking council~~ superintendent may
27 10 investigate the conditions and find the facts with reference
27 11 to the business of making regulated loans, as described in
27 12 section 536.1 and after making the investigation, report in
27 13 writing its findings to the next regular session of the
27 14 general assembly, and upon the basis of the facts:

27 15 a. Classify regulated loans by a rule according to a
27 16 system of differentiation which will reasonably distinguish
27 17 the classes of loans for the purposes of this chapter.
27 18 b. Determine and fix by a rule the maximum rate of
27 19 interest or charges upon each class of regulated loans which
27 20 will induce efficiently managed commercial capital to enter
27 21 the business in sufficient amounts to make available adequate
27 22 credit facilities to individuals. The maximum rate of
27 23 interest or charge shall be stated by the ~~council~~
27 24 ~~superintendent~~ as an annual percentage rate calculated
27 25 according to the actuarial method and applied to the unpaid
27 26 balances of the amount financed.

27 27 2. Except as provided in subsection 7, the ~~council~~
27 28 ~~superintendent~~ may redetermine and refix by rule, in
27 29 accordance with subsection 1, any maximum rate of interest or
27 30 charges previously fixed by it, but the changed maximum rates
27 31 shall not affect pre-existing loan contracts lawfully entered
27 32 into between a licensee and a borrower. All rules which the
27 33 ~~council superintendent~~ may make respecting rates of interest
27 34 or charges shall state the effective date of the rules, which
27 35 shall not be earlier than thirty days after notice to each
28 1 licensee by mailing the notice to each licensed place of
28 2 business.

28 3 3. Before fixing any classification of regulated loans or
28 4 any maximum rate of interest or charges, or changing a
28 5 classification or rate under authority of this section, the
28 6 ~~council superintendent~~ shall give reasonable notice of ~~its the~~
28 7 ~~superintendent's~~ intention to consider doing so to all
28 8 licensees and a reasonable opportunity to be heard and to
28 9 introduce evidence with respect to the change or
28 10 classification.

28 11 4. Beginning July 4, 1965, and until such time as a
28 12 different rate is fixed by the ~~council superintendent~~, the
28 13 maximum rate of interest or charges upon the class or classes
28 14 of regulated loans is ~~three~~ as follows:

28 15 a. ~~Three~~ percent per month on any part of the unpaid
28 16 principal balance of the loan not exceeding one hundred fifty
28 17 dollars ~~and two~~.

28 18 b. ~~Two~~ percent per month on any part of the loan in excess
28 19 of one hundred fifty dollars, but not exceeding three hundred

28 20 dollars, ~~and one.~~
28 21 c. One and one-half percent per month on any part of the
28 22 unpaid principal balance of the loan in excess of three
28 23 hundred dollars, but not exceeding seven hundred dollars, ~~and~~
~~28 24 one.~~

28 25 d. One percent per month on any part of the unpaid
28 26 principal balance of the loan in excess of seven hundred
28 27 dollars.

28 28 5. A licensee under this chapter may lend any sum of money
28 29 not exceeding twenty-five thousand dollars in amount and may
28 30 charge, contract for, and receive on the loan interest or
28 31 charges at a rate not exceeding the maximum rate of interest
28 32 or charges determined and fixed by the ~~council~~ superintendent
28 33 under authority of this section or pursuant to subsection 7
28 34 for those amounts in excess of ten thousand dollars.

28 35 6. If any interest or charge on a loan regulated by this
29 1 chapter in excess of those permitted by this chapter is
29 2 charged, contracted for, or received, the contract of loan is
29 3 void as to interest and charges and the licensee has no right
29 4 to collect or receive any interest or charges. In addition,
29 5 the licensee shall forfeit the right to collect the lesser of
29 6 two thousand dollars of principal of the loan or the total
29 7 amount of the principal of the loan.

29 8 7. a. The council superintendent may establish the
29 9 maximum rate of interest or charges as permitted under this
29 10 chapter for those loans ~~whose with an~~ unpaid principal balance
29 11 ~~is of~~ ten thousand dollars or less. For those loans ~~whose~~
29 12 with an unpaid principal balance is of over ten thousand
29 13 dollars, the maximum rate of interest or charges which a
29 14 licensee may charge shall be the greater of the rate permitted
29 15 by chapter 535 or the rate authorized for supervised financial
29 16 organizations by chapter 537.

29 17 b. The Iowa consumer credit code, chapter 537, applies to
29 18 a consumer loan in which the licensee participates or engages,
29 19 and a violation of the Iowa consumer credit code, chapter 537,
29 20 is a violation of this chapter.

29 21 c. Article 2, parts 3, 5, and 6 of chapter 537, and
29 22 article 3 of chapter 537, sections 537.3203, 537.3206,
29 23 537.3209, 537.3304, 537.3305, and 537.3306 apply to any credit
29 24 transaction, as defined in section 537.1301 in which a
29 25 licensee participates or engages, and any violation of those
29 26 parts or sections is a violation of this chapter. For the
29 27 purpose of applying the Iowa consumer credit code, chapter
29 28 537, to those credit transactions, "consumer loan" includes a
29 29 loan for a business purpose.

29 30 d. A provision of the Iowa consumer credit code, chapter
29 31 537, applicable to loans regulated by this chapter supersedes
29 32 a conflicting provision of this chapter.

29 33 Sec. 39. Section 536.16, subsection 1, Code 2005, is
29 34 amended to read as follows:

29 35 1. Section 536.2 to the extent it ~~requires payment of an~~
~~30 1 annual license fee in excess of two hundred fifty dollars and~~
30 2 requires a person to prove the person has any dollar amount of
30 3 liquid assets or the use of any dollar amount in the conduct
30 4 of the person's business at the licensed place of business.

30 5 Sec. 40. Section 536.23, Code 2005, is amended to read as
30 6 follows:

30 7 536.23 JUDICIAL REVIEW.

30 8 Judicial review of the actions of the superintendent ~~or the~~
~~30 9 state banking council~~ may be sought in accordance with the
30 10 terms of the Iowa administrative procedure Act, chapter 17A.

30 11 Sec. 41. Section 536.28, subsection 3, Code Supplement
30 12 2005, is amended by striking the subsection.

30 13 Sec. 42. Section 536.25, Code 2005, is repealed.

30 14 DIVISION V
30 15 INDUSTRIAL LOANS

30 16 Sec. 43. Section 536A.7, Code 2005, is amended to read as
30 17 follows:

30 18 536A.7 APPLICATION FOR LICENSE.

30 19 1. Applications ~~The application~~ for licenses a license to
30 20 engage in the business of operating an industrial loan
30 21 ~~companies company~~ shall be in writing on such forms in the
~~30 22 form~~ as may be prescribed by the superintendent. The
30 23 application shall give all of the following information:

30 24 a. The name of the corporation, ~~the.~~

30 25 b. The location where the business is to be conducted,
30 26 including the street address of the place of business, ~~the.~~

30 27 c. The names and addresses of the officers and directors
30 28 of the corporation ~~and such other.~~

30 29 d. Other relevant information as the superintendent shall
30 30 require.

30 31 ~~2.~~ At the time of making ~~such the~~ application the
30 32 applicant shall pay to the superintendent the sum of ~~fifty one~~
30 33 ~~hundred~~ dollars to cover the cost of the investigation of the
30 34 applicant. The applicant shall also pay to the superintendent
30 35 the sum of two hundred fifty dollars as an annual license fee
31 1 for the period ending December 31 ~~next~~ following the
31 2 application; ~~provided that if the license is granted after~~
31 3 ~~June 30 in any year, the license fee for the remainder of that~~
31 4 ~~year shall be one hundred twenty-five dollars and any license~~
31 5 ~~fee paid by the applicant in excess of that amount shall be~~
31 6 ~~refunded by the superintendent.~~

31 7 Sec. 44. Section 536A.12, Code 2005, is amended to read as
31 8 follows:

31 9 536A.12 CONTINUING LICENSE == ANNUAL FEE == CHANGE OF
31 10 LOCATION == CHANGE OF CONTROL.

31 11 1. Each ~~such~~ license remains in full force and effect
31 12 until surrendered, revoked, or suspended, or until there is a
31 13 change of control ~~on or after January 1, 1996.~~

31 14 ~~2.~~ A licensee, on or before ~~the second day of January~~
31 15 ~~December 1,~~ shall pay to the superintendent the sum of two
31 16 hundred fifty dollars as an annual license fee for the
31 17 succeeding calendar year. The licensee shall submit the
31 18 annual license fee with a renewal application in the form
31 19 prescribed by the superintendent. The superintendent may
31 20 assess a late fee of ten dollars per day per license for
31 21 applications received after December 1.

31 22 ~~3.~~ When a licensee changes its name or place of business
31 23 from one location to another in the same city, ~~it shall at~~
31 24 ~~once give written notice to the superintendent who shall~~
31 25 ~~attach to the license in writing the superintendent's record~~
31 26 ~~of the change and the date of the change, which is authority~~
31 27 ~~for the operation of the business under that license at the~~
31 28 ~~new place of business the licensee shall notify the~~
31 29 superintendent thirty days in advance of the effective date of
31 30 the change. A licensee shall pay a fee of twenty-five dollars
31 31 per license to the superintendent with the notification of
31 32 change.

31 33 ~~2- 4. a.~~ A person who proposes to purchase or otherwise
31 34 acquire, directly or indirectly, any of the outstanding shares
31 35 of an industrial loan company which would result in a change
32 1 of control of the industrial loan company, shall first apply
32 2 in writing to the superintendent for a certificate of approval
32 3 for the proposed change of control.

32 4 ~~b.~~ At the time of making the application, the applicant
32 5 shall pay to the superintendent one hundred dollars to cover
32 6 the cost of the investigation of the applicant.

32 7 ~~c.~~ The superintendent shall grant the certificate if the
32 8 superintendent is satisfied ~~that~~ of both of the following:

32 9 (1) The person who proposes to obtain control of the
32 10 industrial loan company is qualified by character, experience,
32 11 and financial responsibility to control and operate the
32 12 industrial loan company in a sound and legal manner, and that
32 13 the.

32 14 (2) The interests of the thrift certificate holders,
32 15 creditors, and shareholders of the industrial loan company,
32 16 and of the public generally, shall will not be jeopardized by
32 17 the proposed change of control.

32 18 ~~d.~~ If a board member of the industrial loan company has
32 19 reason to believe any of the requirements of this subsection
32 20 have not been ~~complied with~~ met, the board member shall
32 21 promptly report the facts in writing ~~such facts~~ to the
32 22 superintendent.

32 23 ~~e.~~ If there is any doubt as to whether a change in the
32 24 ownership of the outstanding shares is sufficient to result in
32 25 control of the industrial loan company, or to effect a change
32 26 in the control of the industrial loan company, ~~such the~~ doubt
32 27 shall be resolved in favor of reporting the facts to the
32 28 superintendent.

32 29 ~~3- 5. a.~~ For purposes of this section, "control" means
32 30 control as defined in section 524.103. However, a change of
32 31 control does not occur when a majority shareholder of an
32 32 industrial loan company transfers the shareholder's shares of
32 33 the industrial loan company to a revocable trust, so long as
32 34 the transferor retains the power to revoke the trust and take
32 35 possession of ~~such the~~ shares.

33 1 ~~b.~~ Notwithstanding the provisions of paragraph "a", a
33 2 change of control is deemed to occur two years after the death
33 3 of the majority shareholder, whether the shareholder's shares
33 4 of the industrial loan company are held in a revocable trust
33 5 or otherwise.

33 6 Sec. 45. Section 536A.15, Code 2005, is amended to read as

33 7 follows:

33 8 536A.15 EXAMINATION OF LICENSEES.

33 9 1. The superintendent or the superintendent's ~~duly~~
~~33 10 authorized representative designee~~ shall, at least once each
33 11 year without previous notice, examine the books, accounts, and
33 12 records of each licensee engaged in the industrial loan
33 13 business as defined by this chapter. A licensee issuing
33 14 senior debt to the general public shall be audited at the
33 15 expense of the licensee by a certified public accountant
33 16 licensed to practice in the state of Iowa. A licensee not
33 17 issuing senior debt to the general public may provide an
33 18 audited statement of the licensee's parent corporation which
33 19 includes the Iowa licensee. After receiving such an audit or
33 20 audited statement, the superintendent may make further
33 21 examination of the licensee as the superintendent deems
33 22 necessary. A record of each examination shall be kept in the
33 23 superintendent's office. ~~The examinations and reports, and~~
~~33 24 other information connected with them, shall be kept~~
~~33 25 confidential in the office of the superintendent and shall not~~
~~33 26 be subject to publication or disclosure to others except as in~~
~~33 27 this chapter provided.~~

33 28 2. Except as otherwise provided by this chapter, all
33 29 papers, documents, examination reports, and other writing
33 30 relating to the supervision of licensees are not public
33 31 records and are not subject to disclosure under chapter 22.
33 32 The superintendent may disclose information to representatives
33 33 of other state or federal regulatory authorities. The
33 34 superintendent may release summary complaint information so
33 35 long as the information does not specifically identify the
34 1 complainant. The superintendent may prepare and circulate
34 2 reports reflecting financial information and examination
34 3 results for all licensees on an aggregate basis, including
34 4 other information considered pertinent to the purpose of each
34 5 report for general statistical information. The
34 6 superintendent may prepare and circulate reports provided by
34 7 law. The superintendent may release the reports and
34 8 correspondence in the course of an enforcement proceeding or a
34 9 hearing held by the superintendent. The superintendent may
34 10 also provide this information to the attorney general for
34 11 purposes of enforcing this chapter or the consumer fraud Act,
34 12 section 714.16.

34 13 3. Any evidence of criminal acts committed by officers,
34 14 directors, or employees of an industrial loan company shall be
34 15 reported by the superintendent to the proper authorities.

34 16 4. The licensee shall be charged and shall pay the actual
34 17 costs of the examination as determined by the superintendent
34 18 based on the actual cost of the operation of the finance
34 19 bureau of the banking division of the department of commerce
34 20 including the proportionate share of administrative expenses
34 21 in the operation of the banking division attributable to the
34 22 finance bureau as determined by the superintendent incurred in
34 23 the discharge of the duties imposed upon the superintendent by
34 24 this chapter. Failure to pay the examination fee within
34 25 thirty days of receipt of demand from the superintendent shall
34 26 subject the licensee to a late fee of five percent of the
34 27 amount of the examination fee for each day the payment is
34 28 delinquent.

34 29 Sec. 46. Section 536A.25, subsections 1 and 3, Code 2005,
34 30 are amended to read as follows:

34 31 1. a. An industrial loan company licensed under this
34 32 chapter that sells debt instruments to the general public in
34 33 the form of thrift certificates, installment thrift
34 34 certificates, certificates of indebtedness, promissory notes,
34 35 or similar evidences of indebtedness shall not make a loan of
35 1 money or property to or guarantee the obligations of its
35 2 directors or officers; or loan to any borrower, other than a
35 3 subsidiary or affiliated corporation, more than twenty percent
35 4 of its total capital, surplus, and undivided profits.

35 5 b. A licensee shall not make a loan under any other name
35 6 or at any other place of business than that named in the
35 7 license.

35 8 3. Investments by an industrial loan company licensed
35 9 under this chapter that sells debt instruments to the general
35 10 public in the form of thrift certificates, installment thrift
35 11 certificates, certificates of indebtedness, promissory notes,
35 12 or similar evidences of indebtedness are subject to the
35 13 provisions of section 524.901 as applied to state banks.

35 14 Sec. 47. Section 536A.30, Code 2005, is amended to read as
35 15 follows:

35 16 536A.30 NONRESIDENT LICENSEES == FACE=TO=FACE
35 17 SOLICITATION.

35 18 Notwithstanding other provisions of this chapter to the
35 19 contrary, a person ~~which~~ that neither has an office physically
35 20 located in this state nor engages in face-to-face solicitation
35 21 in this state, if authorized by another state to make loans in
35 22 that state at a rate of finance charge in excess of the rate
35 23 provided in chapter 535, shall not be subject to the following
35 24 provisions of this chapter:

~~35 25 1. Section 536A.7, to the extent it requires payment of an
35 26 annual license fee in excess of two hundred fifty dollars.~~

~~35 27 2. Section 536A.8.~~

~~35 28 3. 2. Section 536A.10, subsections 2, 3, and 4.~~

~~35 29 4. Section 536A.12, to the extent it requires a licensee
35 30 to pay an annual license fee which, when combined with that
35 31 required in section 536A.7, is in excess of two hundred fifty
35 32 dollars.~~

35 33 5. 3. Section 536A.15, to the extent it requires the
35 34 superintendent to make an examination and audit of the books,
35 35 accounts and records of the licensee on a periodic basis.

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JEFFREY M. LAMBERTI
President of the Senate

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CHRISTOPHER C. RANTS
Speaker of the House

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36 11

36 12 I hereby certify that this bill originated in the Senate and
36 13 is known as Senate File 2353, Eighty-first General Assembly.

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MICHAEL E. MARSHALL
Secretary of the Senate

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36 19 Approved _____, 2006

36 20

36 21

36 22

THOMAS J. VILSACK

36 24 Governor